



## Implementation of the Environmental Advisory Rules Committee's (ARC) Recommendations

Status Report

Spring 2012

This is the first of twelve quarterly reports of the Department of Environmental Quality's (DEQ) progress in addressing the 77 recommendations contained in a report released by the Office of Regulatory Reinvention (ORR) on February 21, 2012. The recommendations were developed by the Environmental ARC whose members were appointed by the ORR and were tasked with conducting a comprehensive review of the department's regulations and offering recommendations for improvement. Please send comments or questions regarding this report to Dave Fiedler, DEQ's Regulatory Affairs Officer, at [fiedlerd@michigan.gov](mailto:fiedlerd@michigan.gov).

### Implementation Plans

All of the divisions have developed implementation plans for their respective recommendations. It is projected that work on ninety percent of the recommendations will begin by the end of 2012 and all recommendations will be completed by the end of 2014. Some of the recommendations require actions to be taken by those outside of the DEQ. Implementation is a dynamic process; therefore, the plans will be updated on a routine basis.

### Recommendation A-2: Mercury Rules: Part 15 Rules (R 336.2501 – R 336.2514)

The federal Mercury Air Toxics Rule (MATS) has been published, but federal court challenges are expected. Under Michigan Rule 1512(1)(a)(i), companies are required to submit a permit application for each of the affected electric generating units (EGUs) by June 2012 with the earliest compliance plans due in June 2013 (Rule 1503). The DEQ, Air Quality Division (AQD), recognizes the uncertainty this places on the regulated community. The state rules remain in place as this provides a backstop necessary for Michigan to address total maximum daily load (TMDL) requirements of the Clean Water Act. However, the AQD will be issuing a variance for the permit application date. Section 5535 (MCL 324.5535 *Suspension of enforcement; reasons; variance*) of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), allows the DEQ to suspend enforcement of any rule that would be an unreasonable hardship upon the person, provided it is granted by variance and it does not violate the federal Clean Air Act (CAA). The granting of a variance is very rare; in fact, since the early 1980s only the suspension of enforcement of Rule 225 for certain natural gas combustion emissions has been granted. Altering this first milestone to coincide with the plan submission is reasonable and does not violate the Clean Air Act. In the future, if the uncertainty with the federal rules remains, additional variances may be granted. The AQD will be conducting outreach to the affected sources on this approach.

### **Recommendation R-15: Quality Review Team**

The Remediation Division's (RD) Field Operations Quality Review Team was disbanded in December 2012. It has been replaced with an enhanced District Peer Review Process, wherein the District Supervisor has been given authority to approve all submittals. Ten Technical Support Teams have been enhanced and/ or created within RD to serve as a technical resource to project managers and district staff. A formal Division Policy and Procedure on both the District Peer Review Team and the Technical Support Teams will be completed in the next quarter.

### **Recommendations W-5, W-8, and W-12: Wetland Program Reforms**

The following 3 recommendations are being addressed in a Wetland Program Reforms package that the department and the Legislature are working on.

- **W-5:** Amend Part 301 (Inland Lakes and Streams), 303 (Wetlands Protection), and 325 (Great Lakes Submerged Lands) to adopt U.S. Army Corps of Engineers (USACE) Nationwide Permitting Approach).
- **W-8** (Resolve agricultural issues pertaining to Parts 301 and 303).
- **W-12** (Wetland Mitigation Banking)

Draft legislation was vetted by the Wetland Advisory Council in February and is currently being drafted by Legislative Service Bureau (LSB). The intent of the lead sponsor, Representative Stamas, is to have the package wrapped up by the Legislature's summer break. The package will incorporate a reporting general permit (similar to a permit-by-rule) for some agricultural activities that cannot be exempt. The reforms package addresses the agricultural exemption issues in W-8. Wetland mitigation banks are the largest component of the reforms package. It includes a \$10 million revolving loan fund available to local units of government to help in the up front funding of banks.

Other elements of the reforms package include aligning the minor project/general permit application fee across Parts 301, 303, and 325; improve flexibility in the mitigation requirements; pursue federal funding to partially support the program starting in FY 2013; and a new Memorandum of Agreement with the U.S. Environmental Protection Agency clarifying the agencies' roles.

### **Recommendation W-13: Annual Wastewater Report**

This recommendation has been completed. Public Act 43 of 2012 has repealed the annual wastewater reporting requirement contained in the NREPA and rescinded the corresponding rules. The DEQ's [annual wastewater reporting Web site](#) has been modified to reflect this change.

### **Recommendation G-2: Treatment of DEQ Non-Rule Regulatory Actions**

Existing DEQ Policy and Procedures No. 01-019 and No. 09-012 have been superseded by a new department policy. The new policy, "Department Policy and Procedure, Division Policy and Procedure, and Administrative Procedures Act Guideline Development, Revision, Rescission and Use, No. 09-013" will improve the consistency and accessibility of all the department and division policies and procedures.

This new policy along with all future policy and procedures is located at [www.michigan.gov/deq](http://www.michigan.gov/deq). Select "Key Topics" in the left-hand column and then select "Policies and Procedures." The divisions are currently reviewing their existing non-rule regulatory actions and will be posting them in the new template on this Web page.